

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Respondent.

OAH No. N2005110441

**ORDER DENYING PETITIONER'S
MOTION TO COMPEL PRODUCTION
OF SCHOOL RECORDS AND
REQUEST FOR SANCTIONS**

On May 10, 2006, Petitioner filed a motion to compel production of school records and a request for sanctions. On May 12, 2006, Respondent filed its opposition to the motion to compel and request for sanctions. On May 18, 2006, Respondent filed a declaration in support of its opposition. A mediation session is scheduled for June 27, 2006. The hearing is scheduled for July 12, 2006.

APPLICABLE LAW

Education Code section 56504 provides that a parent shall have the right to receive copies of all school records within five days after a request is made by the parent.

An administrative law judge has the authority to place expenses at issue, and award costs, including attorney's fees, incurred by a party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delays. (Gov. Code, § 11455.30; Cal. Code Regs., tit. 5, § 3088.)

California cases applying Code of Civil Procedure section 128.5, which is referenced in Government Code section 11455.30, hold that a trial judge awarding fees must state specific circumstances giving rise to the award of attorney's fees, and articulate with particularity the basis for finding the sanctioned party's conduct reflected tactics or actions performed in bad faith and that were frivolous or designed to harass or designed to cause unnecessary delay. (*Childs v. Painewebber Incorporated* (1994) 29 Cal.App.4th 982, 996; *County of Imperial v. Farmer* (1998) 205 Cal.App.3d 479, 486. The purpose of the statute is not only to compensate, but it is also a means of controlling burdensome and unnecessary legal tactics. (*On v. Cow Hollow Properties* (1990) 222 Cal.App.3d 1568, 1577.) 'Bad faith' must be shown; it is not sufficient that a party or party's representative engage in actions or tactics which are without merit, frivolous, or solely intended to cause unnecessary delay.

(*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.) However, the bad faith requirement does not impose a determination of evil motive; subjective ‘bad faith’ may be inferred. (*Id.* at p. 702.)

DISCUSSION

Petitioner argues that Respondent has failed to comply with his mother’s request for a complete copy of his school records. Although Respondent provided some records, Petitioner believes that not all of his records were provided. Petitioner requests an order requiring Respondent to immediately produce all of his school records. In the alternative, Petitioner requests an order that Respondent provide a statement under penalty of perjury that it has no records in its possession, custody or control other than those already produced. Petitioner also requests an order requiring Respondent to pay Petitioner sanctions of \$4,950 for his costs incurred in seeking the records.

Respondent argues that there is no authority for Petitioner’s motion to compel the production of school records or its request for sanctions in this proceeding. Respondent further argues that it provided Petitioner a copy of his school records and it did not act in bad faith.

Petitioner provided no authority, and none was found, that the Office of Administrative Hearings has authority to compel Respondent to provide school records under Education Code section 56504. Petitioner has failed to show a basis upon which Respondent should be ordered to pay sanctions.

ORDER

1. Petitioner’s motion to compel production of school record is denied.
2. Petitioner’s motion for sanctions is denied.

Dated: May 26, 2006

Original signed by

JUDITH A. KOPEC
Administrative Law Judge
Special Education Division
Office of Administrative Hearings